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MAILED
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OFFICE OF PETITIONS

In re Patent No. 8,067,199	:	
Fung et al.	:	DECISION ON REQUEST
Issue Date: 11/29/2011	:	FOR RECONSIDERATION OF
Application No. 10/583927	:	PATENT TERM ADJUSTMENT
Filing or 371(c) Date: 01/29/2009	:	and
Attorney Docket No.	:	NOTICE OF INTENT TO ISSUE
CASE 1050 US	:	CERTIFICATE OF CORRECTION

This is a decision on the petition filed on January 27, 2012, under 37 CFR 1.705(d), requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by eight hundred eighty-nine (889) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by eight hundred eighty-nine (889) days is **GRANTED to the extent indicated herein.**

A review of Office records reveals that the Office errantly assessed a reduction of 9 days in accordance with 37 CFR 1.704(c)(10) in connection with the filing of an Information Disclosure Statement ("IDS"), filed October 10, 2011. Office records confirm that the IDS included the statement required by 37 CFR 1.704(d). A review of the application history further confirms that the IDS was not otherwise filed under circumstances that constitute a failure to engage in reasonable efforts to conclude prosecution. The period of reduction of nine (9) days entered for the IDS is not warranted and is being removed.

A review of the application history also reveals that this Office errantly failed to assess reductions in accordance with 37 CFR 1.704(c)(7) in connection with the filing of a replies to a Notification of Missing Requirement Under 35 U.S.C. 371 in the United States Designated/Elected Office (DO/EO/US) (hereinafter "Notification"), mailed April 9, 2007, and in connection with the subsequent abandonment of the application in accordance with 37 CFR 1.704(c)(3) and/or (c)(4).

Applicant filed an initial, defective reply to the Notification on June 8, 2007. Applicant was notified that the reply was defective in a Notification of Defective Response, mailed August 21, 2007.

Applicant thereafter filed a supplemental, defective reply to the Notification on September 25, 2007. Applicant was notified that the supplemental reply was defective in a Notification of Defective Response, mailed August 29, 2008. This Notification of Defective Response set a non-extendable 30 day period for reply.

Applicant thereafter filed a second, supplemental, defective reply to the Notification on September 29, 2008, including a petition under 37 CFR 1.47(a), and supplemented this reply on October 17, 2008.

In a decision on the petition under 37 CFR 1.47(a), Applicant was notified that the application was abandoned for failing to file a complete and proper reply to the Notification of Defective Response, mailed August 29, 2008, the date of abandonment being September 30, 2008.

Applicant filed a petition to revive the application on January 29, 2009, including a complete and proper reply to the Notification, and a decision granting the petition was mailed on February 3, 2009.

Reduction pursuant to 37 CFR 1.704(c)(7)

The reduction pursuant to 37 CFR 1.704(c)(7), beginning on the day after the date the reply having an omission was filed, June 9, 2007, and ending on the date that the reply or other paper correcting the omission was filed (the date of filing the grantable petition), January 29, 2009, is 601 days.

Reduction pursuant to 37 CFR 1.704(c)(3) and/or (c)(4)

A further review of Office records reveals that the Office also errantly neglected to assess a reduction in connection with the abandonment and revival of the application in accordance with 37 CFR 1.704(c)(3). A review of Office records confirms that the application was abandoned on September 30, 2008, and a decision reviving the application was mailed on February 3, 2009. Pursuant to 37 CFR 1.704(c)(3), a reduction of 127 days, beginning on the date of abandonment, September 30, 2008, and ending on date of mailing of the decision reviving the application, February 3, 2009, is appropriate. It is noted the period of reduction pursuant to 37 CFR 1.704(c)(3) overlaps with the period of reduction pursuant to 37 CFR 1.704(c)(7), beginning on the date of abandonment, September 30, 2008, and ending on the date that the reply or other paper correcting the omission was filed (the date of filing the grantable petition), January 29, 2009, for a total of 122 days.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentees are given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **four hundred eighty-one (481) days** (1087 days (889 days + 198 days) Office adjustments - 606 days (601 days + 127 days - 122 days overlap) Applicant delay).

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3232.

/DLW/

Derek L. Woods
Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 8,067,199 B2

DATED : November 29, 2011

INVENTOR(S) : Fung et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 880 days.

Delete the phrase "by 880 days" and insert – by 481 days--